

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSUE PALMA, as an individual on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

TK&K SERVICES.

Defendant.

Case No. 1:23-cv-00434-JLT-CDB

SCHEDULING ORDER (Fed. R. Civ. P. 16)

Pleading Amendment Deadline: July 3, 2023

Discovery Deadlines:

Rule 26 Disclosures: July 17, 2023

Non-Expert: June 5, 2024

Expert: August 12, 2024

Mid-Discovery Status Conf.: November 8, 2023

Non-Dispositive Motion Deadlines:

Filing: August 21, 2024

Hearing: September 27, 2024, 10:30 a.m.

Dispositive Motion Deadlines:

Filing: October 12, 2024

Hearing: November 21, 2024, 8:30 a.m.

Pre-Trial Conference: January 21, 2025, 1:30 p.m.
2500 Tulare Street, Fresno, CA

Trial: March 18, 2025, 8:30 a.m.
2500 Tulare Street, Fresno, CA

Plaintiff Josue Palma ("Plaintiff"), is a former employee of Defendant TK&K Services. ("Defendant"). In this putative class action, Plaintiff raises on behalf of himself and all others similarly situated the following claims against Defendant: (1) recovery of unpaid minimum wages and

1 liquidated damages, (2) recovery of unpaid overtime wages, (3) failure to provide meal periods or
2 compensation in lieu thereof, (4) failure to provide rest periods or compensation in lieu thereof, (5)
3 failure to furnish accurate itemized wage statements, (6) failure to reimburse business expenses, and
4 (7) unfair competition.

5 The parties convened before the Court via Zoom videoconference for a scheduling conference
6 on June 27, 2023. Brandon Kyle Brouillette appeared on behalf of Plaintiff and Chris C. Scheithauer
7 appeared on behalf of Defendant.

8 **I. Fictitiously-Named Defendants**

9 All claims as to “Doe” Defendants, including any counterclaims and cross-claims, are hereby
10 **Dismissed.**

11 **II. Pleading Amendment Deadline**

12 Any proposed amended pleading must be filed via stipulation or motion to amend, not later
13 than **July 3, 2023.**

14 **III. Discovery Plan and Cut-Off Date**

15 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
16 on or before **July 17, 2023.**

17 The parties are ordered to complete all discovery pertaining to non-experts on or before **June**
18 **5, 2024**, and all discovery pertaining to experts on or before **August 12, 2024.**

19 The parties are directed to disclose all expert witnesses, in writing, on or before **June 19, 2024**,
20 and to disclose all rebuttal experts on or before **July 12, 2024**. The written designation of retained and
21 non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and
22 shall include all information required thereunder. Failure to designate experts in compliance with this
23 order may result in the Court excluding the testimony or other evidence offered through such experts
24 that are not disclosed pursuant to this order.

25 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
26 experts and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
27 included in the designation. Failure to comply may result in the imposition of sanctions, which may
28 include striking the expert designation and preclusion of expert testimony.

1 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
2 disclosures and responses to discovery requests will be strictly enforced.

3 A mid-discovery status conference is scheduled for **November 8, 2023**, at 9:00 a.m. before
4 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference
5 report no later than **one week before the conference**. Counsel also SHALL lodge the status report via
6 e-mail to CDBorders@caed.uscourts.gov. The joint report SHALL outline the discovery counsel have
7 completed and that which needs to be completed as well as any impediments to completing the
8 discovery within the deadlines set forth in this order. Counsel SHALL discuss settlement and certify
9 in the joint status report (1) that they have met/conferred regarding settlement, and (2) proposed dates
10 for convening a settlement conference with Magistrate Judge Baker (or an unassigned magistrate in
11 the event the parties later consent to magistrate judge jurisdiction).

12 **IV. Motion for Class Certification**

13 Pursuant to District Judge Jennifer L. Thurston's standing order (Doc. 10 p.2), motions for
14 class certification shall be heard by the assigned magistrate judge. Plaintiff's anticipated motion for
15 class certification shall be filed no later than **January 12, 2024**. Defendant's opposition to Plaintiff's
16 motion for class certification shall be filed no later than **February 16, 2024**, and Plaintiff shall file a
17 reply no later than **March 8, 2024**. A hearing on the anticipated motion for class certification shall be
18 heard on or before **March 22, 2024 at 10:30 a.m.**

19 **V. Pre-Trial Motion Schedule**

20 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
21 than **August 21, 2024**,¹ and heard on or before **September 27, 2024**. The Court hears non-dispositive
22 motions at 10:30 a.m. at the United States District Courthouse in Bakersfield, California before
23 Magistrate Judge Baker.

24 No motion to amend or stipulation to amend the case schedule will be entertained
25 unless it is filed at least one week before the first deadline the parties wish to extend. Likewise, no
26

27 ¹ Non-dispositive motions related to non-expert discovery SHALL be filed within a
28 reasonable time of discovery of the dispute, but in no event later than 10 days after the expiration of
the non-expert discovery deadline.

1 written discovery motions shall be filed without the prior approval of the Court. A party with a
2 discovery dispute must first confer with the opposing party in a good faith effort to resolve by
3 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
4 shall seek a hearing with all involved parties and Magistrate Judge Baker. For these hearings and at
5 the direction of the Courtroom Deputy Clerk, the Court may direct counsel to appear remotely (via
6 Zoom). For hearings noticed to occur in-person, the Court may permit counsel to appear remotely (via
7 Zoom) provided the Courtroom Deputy Clerk receives a written notice of the request to appear
8 remotely no later than five court days before the noticed hearing date.

9 At least three days before the conference, counsel SHALL file informal letter briefs detailing
10 their positions. The briefs may not exceed 5 pages, excluding exhibits. Counsel must comply with
11 Local Rule 251 with respect to discovery disputes.

12 All dispositive pre-trial motions shall be filed no later than **October 12, 2024**, and
13 heard on or before **November 21, 2024 at 8:30 a.m.** In scheduling such motions, absent consent to
14 Magistrate Judge jurisdiction, counsel SHALL consult the assigned District Judge's general
15 information and calendar accordingly, and SHALL comply with Fed. R. Civ. P. 56 and Local Rules
16 230 and 260.

17 **VI. Motions for Summary Judgment or Summary Adjudication**

18 At least 21 days before filing a motion for summary judgment or motion for summary
19 adjudication, the parties SHALL meet, in person or by telephone, to confer about the issues to be
20 raised in the motion.

21 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
22 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
23 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
24 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
25 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

26 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed
27 statement of undisputed facts **at least five days before** the conference. The finalized joint statement
28 of undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be

1 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
2 statement of undisputed facts.

3 In the notice of motion, the moving party SHALL certify that the parties have met and
4 conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer.
5 Failure to comply may result in the motion being stricken.

6 **VII. Pre-Trial Conference**

7 **January 21, 2025**, at 1:30 p.m., located at the United States District Courthouse, 2500 Tulare
8 Street, in Fresno, California, before District Judge Jennifer L. Thurston.

9 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The
10 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly
11 to District Judge Thurston's chambers, by email at JLTorders@caed.uscourts.gov.

12 Counsels' attention is directed to Rules 281 and 282 of the Local Rules for the Eastern District
13 of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will
14 insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules,
15 the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the Court to
16 explain the nature of the case to the jury during voir dire.

17 **VIII. Trial Date**

18 **March 18, 2025**, at 8:30 a.m., located at the United States District Courthouse, 2500 Tulare
19 Street, in Fresno, California, before District Judge Jennifer L. Thurston.

20 A. This is a jury trial.

21 B. Counsels' Estimate of Trial Time: 3-5 days (if class is not certified).

22 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
23 California, Rule 285.

24 **IX. Settlement Conference**

25 The parties SHALL meet and confer and notify the Court prior to the Pre-Trial Conference
26 whether they wish to convene a Settlement Conference. In the event the parties request a Settlement
27 Conference, unless otherwise permitted in advance by the Court, the attorneys who will try the case
28

1 shall appear at the settlement conference **with the parties** and the person or persons having full
2 authority to negotiate and settle the case on any terms² at the conference.

3 Consideration of settlement is a serious matter that requires preparation prior to the settlement
4 conference. Set forth below are the procedures the Court will employ, absent good cause, in
5 conducting the conference.

6 At least twenty-one days before the settlement conference, Plaintiff SHALL submit to
7 Defendant via fax or e-mail, a written itemization of damages and a meaningful³ settlement demand
8 which includes a brief explanation of why such a settlement is appropriate. Thereafter, no later than
9 fourteen days before the settlement conference, Defendant SHALL respond, via fax or e-mail, with an
10 acceptance of the offer or with a meaningful counteroffer which includes a brief explanation of why
11 such a settlement is appropriate.

12 If settlement is not achieved, each party SHALL attach copies of their settlement offers to their
13 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
14 not be filed on the court docket.

15 CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

16 At least five court days prior to the settlement conference, the parties shall submit, directly to
17 Magistrate Judge Baker's chambers by e-mail to CDBOrders@caed.uscourts.gov, a Confidential
18 Settlement Conference Statement. The statement should not be filed with the Clerk of the Court nor
19 served on any other party, although the parties may file a Notice of Lodging of Settlement Conference
20
21

22 ² Insurance carriers, business organizations, and governmental bodies or agencies whose
23 settlement agreements are subject to approval by legislative bodies, executive committees, boards of
24 directors or the like shall be represented by a person or persons who occupy high executive positions in
25 the party organization and who will be directly involved in the process of approval of any settlement
offers or agreements. To the extent possible, the representative shall have authority, if he or she deems
it appropriate, to settle the action on terms consistent with the opposing party's most recent demand.

26 ³ "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to
27 the offering party. "Meaningful" does not include an offer which the offering party knows will not be
28 acceptable to the other party. If, however, the offering party is only willing to offer a settlement which
it knows the other party will not accept, this should trigger a recognition the case is not in a settlement
posture and the parties should confer about continuing or vacating the settlement conference via
stipulation.

1 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
2 settlement conference indicated prominently thereon.

3 The Confidential Settlement Conference Statement shall include the following:

4 A. A brief statement of the facts of the case.

5 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon
6 which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the
7 claims and defenses; and a description of the major issues in dispute.

8 C. A summary of the proceedings to date.

9 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.

10 E. The relief sought.

11 F. The party's position on settlement, including present demands and offers and a history
12 of past settlement discussions, offers and demands.

13 **X. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten**
14 **Trial**

15 None at this time.

16 **XI. Related Matters Pending**

17 There are no pending related matters.

18 **XII. Compliance with Federal Procedure**

19 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
20 and the Local Rules of the Eastern District of California, and to keep abreast of any amendments
21 thereto. The Court requires compliance with these Rules to efficiently handle its increasing case load.

22 **XIII. Effect of this Order**

23 The foregoing order represents the best estimate of the court and counsel as to the agenda most
24 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
25 parties determine at any time that the schedule outlined in this order cannot be met, counsel are
26 ordered to notify the court immediately of that fact so that adjustments may be made, either by
27 stipulation or by subsequent status conference.

1 The dates set in this Order are considered to be firm and will not be modified absent a showing of
2 good cause even if the request to modify is made by stipulation. Stipulations extending the deadlines
3 contained herein will not be considered unless they are accompanied by affidavits or declarations, and
4 where appropriate attached exhibits, which establish good cause for granting the relief requested.

5 Failure to comply with this order may result in the imposition of sanctions.

6 IT IS SO ORDERED.

7 Dated: June 27, 2023

8 
UNITED STATES MAGISTRATE JUDGE